IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1134 of 2001

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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RATANSANG HMALBHAI RANA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1134 of 2001
MR GM JOSHI for Petitioner No. 1-2
MS MANISHA LAVKUMAR,AGP for Respondent No. 1
MR HS MUNSHAW for Respondent No. 2
MR NAGIN N GANDHI for Respondent No. 3-4
NOTICE SERVED BY DS for Respondent No. 3-4

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE K.R.VYAS

Date of decision: 16/07/2001

ORAL JUDGEMENT

(Per : CHIEF JUSTICE MR DM DHARMADHIKARI)

Rule. Ms.Manisha Lavkumar, learned AGP waives

service for respondent no.1, Mr. HS Munshaw, learned Counsel waives service for respondent no.2 and Mr.N.N. Gandhi, learned Counsel waives service for respondents no. 3 and 4.

Heard the learned Counsel for the parties.

This PIL is filed by two plot holders of plot nos. 1076/2/3 and 1108 situated in Ambawadi area of Bhavnagar. According to the averments made in the petition, by the action of Bhavnagar Municipal Corporation to allot a plot of land to Bhavnagar Vruddhashram Trust (respondent no.3) represented by its Managing Trustee (respondent no.4), small lane or public street which passes through the proposed plotted plots would be totally closed.

On notice being issued in this petition, Bhavnagar Municipal Corporation, respondent no.2 and the allottees i.e. the trust and the managing trustee, respondents no. 3 and 4, through their learned Counsel have placed before us a map in which the allotted plot of land to the trust is shown in purple colour. The map placed before us may be seen as a part of our order. The learned Counsel appearing for the Bhavnagar Municipal Corporation states that the small strip of land between two purple portions was never a part of public street or a public road. The learned Counsel submitted that in the town planning, the small strip of land behind the allotted plots was kept vacant as a service line.

On behalf of the trust, learned Counsel submits that on the same subject matter of alleged closure of road, civil suit by adjoining plot holders has been filed in Civil Court, but the injunction sought has been refused. It is submitted that because the civil suit filed at the instance of four plot holders is already pending, this Court should decline to entertain this PIL.

Having heard the learned Counsel appearing for the parties, the undisputed position that emerges before us on the stand taken by the Corporation is that the small strip of land between two purple portions allotted to the trust has all throughout been vacant as a service line. If that be so, merely because service lines are now not required to be laid by Bhavnagar Municipal Corporation because of the underground drainage, such service lines cannot be allowed to be allotted. Some service lines behind constructed houses or plots are necessary for maintenance of the houses and for egress and ingress of the material required for the purpose of maintaining construction. Admittedly, therefore, the strip of land between two purple portions is a part of service line which is for the convenience of other plot holders in the township. It is wrong on the part of the Corporation to allot the said strip of land to the trust.

In view of this admitted position, merely because four plot holders have filed a suit, it would not be proper for us to decline relief to other residents.

For the aforesaid reasons, we allow this petition and quash the impugned resolution dated 28.6.2000. We direct the Corporation not to allot the small strip of land used as service line, to the trust.

Rule is accordingly made absolute with no order as to costs.

(D.M.Dharmadhikari,C.J.)

(K.R.Vyas,J.)

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